

# Senate Daily Reader

**Thursday, February 03, 2000**

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# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

870D0103

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1009** - 1/19/00

Introduced by: The Committee on Local Government at the request of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to redefine what marks are prohibited on a ballot and to  
2 require the county auditor to provide certain directions in conducting a recount.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-18-22 be repealed.

5 ~~12-18-22. No voter shall place any mark upon his ballot by which it may afterwards be~~  
6 ~~identified as the one voted by him.~~

7 Section 2. That chapter 12-18 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 If a name is written on a ballot in an attempt to cast a write-in-vote, the vote cast for that  
10 particular office may not be counted. However, any vote cast for any other office may be  
11 counted.

12 Section 3. That § 12-21-20 be amended to read as follows:

13 12-21-20. The county auditor, immediately on the ~~due~~ filing ~~with him~~ of any petition for a  
14 recount or upon receipt from the secretary of state of notice of such filing with the secretary of  
15 state, shall notify in writing, with the seal of ~~his~~ the auditor's office, the presiding judge of the  
16 circuit court for ~~his~~ the auditor's county. The presiding judge shall appoint a board, ~~as is provided~~

1 ~~by pursuant to~~ § 12-21-2, for each county in ~~his~~ the circuit in which a recount is to be conducted.

2 The presiding judge may appoint the board ~~provided by § 12-21-2~~ anytime within thirty days

3 prior to a primary or general election or upon the filing of the petition for recount. The board

4 shall then convene in the office of the county auditor on the second Monday, ~~at ten o'clock in~~

5 ~~the morning at ten a.m.~~ following the filing of ~~such~~ the petition, ~~unless that day. However, if the~~

6 second Monday is a legal holiday, ~~in which case~~ the board shall convene at ten o'clock in the

7 ~~morning a.m.~~ of the day following, ~~and. The county auditor shall provide the recount board with~~

8 laws, rules, and forms to use in conducting the recount. The board shall then proceed with the

9 recount.

1    **BILL HISTORY**

2    1/11/00 First read in House and referred to committee assignment waived. H.J. 13

3    1/14/00 Referred to State Affairs. H.J. 48

4    1/19/00 Scheduled for Committee hearing on this date.

5    1/19/00 State Affairs Do Pass Amended, Passed, AYES 10, NAYS 1. H.J. 127

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

718D0286

## HOUSE ENGROSSED NO. **HB1060** - 1/27/00

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise the standards of review for findings of fact.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 15-6-52(a) be amended to read as follows:

4 15-6-52(a). In all actions tried upon the facts without a jury or with an advisory jury, the  
5 court shall, unless waived as provided in § 15-6-52(b), find the facts specially and state  
6 separately its conclusions of law thereon, and judgment shall be entered pursuant to § 15-6-58;  
7 ~~and in.~~ In granting or refusing temporary restraining orders or preliminary injunctions, the court  
8 shall similarly set forth the findings of fact and conclusions of law which constitute the grounds  
9 of its action. Findings of fact ~~shall, whether based on oral or documentary evidence, may~~ not be  
10 set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial  
11 court to judge of the credibility of the witnesses. The findings of a referee, to the extent that the  
12 court adopts them, shall be considered as the findings of the court. Findings of fact and  
13 conclusions of law need not be made ~~when~~ if a temporary restraining order or preliminary  
14 injunction is entered in an action arising under chapters 25-3 and 25-4.

15 A copy of the proposed findings shall be served upon the attorneys of record to the action  
16 or upon the parties of record to the action ~~when~~ if not represented by counsel. The court may  
17 direct counsel for the prevailing party to prepare findings; and counsel shall, within ten days after

1 announcement of decision, unless otherwise ordered, prepare, serve, and submit to the court with  
2 copies to opposing counsel, proposed written findings of fact and conclusions of law together  
3 with the proposed judgment or decree.

4 The court ~~shall~~ may not sign any findings therein prior to the expiration of five days after  
5 service of the proposed findings during which time the parties may in writing submit to the court  
6 and serve on their adversaries their objections or additional proposals. Thereafter the court shall  
7 make or enter such findings and conclusions as may be proper.

8 Any action or decision of the court in making or modifying findings of fact or conclusions  
9 of law shall be deemed excepted to, but the failure of the court to make a finding or conclusion  
10 on a material issue ~~shall~~ is not to be deemed excepted to unless such finding or conclusion has  
11 been proposed to or requested from the court.

12 If an opinion or memorandum of decision is filed, the facts and legal conclusions stated  
13 therein need not be restated but may be included in the findings of fact and conclusions of law  
14 by reference.

15 Findings of fact and conclusions of law are unnecessary on decisions of motions under  
16 § 15-6-12 or 15-6-56 or any other motion except as provided in § 15-6-41(b).

1    **BILL HISTORY**

2    1/14/00 First read in House and referred to Judiciary. H.J. 46

3    1/24/00 Scheduled for Committee hearing on this date.

4    1/24/00 Judiciary Do Pass Amended, Passed, AYES 10, NAYS 2. H.J. 191

5    1/26/00 Motion to Amend, Passed. H.J. 254

6    1/26/00 House of Representatives Do Pass Amended, Passed, AYES 65, NAYS 3. H.J. 254

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

484D0104

## SENATE EDUCATION COMMITTEE

### ENGROSSED NO. **SB2** - 2/2/00

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Senators Olson, Lawler, and Moore and Representatives Kooistra, Brown (Jarvis), Garnos, Hagen, and Hennies at the request of the Interim Drug Sales and Use Committee

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions banning students from  
2 extracurricular activities in secondary schools for controlled substance violations.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-32-9 be amended to read as follows:

5 13-32-9. Any person adjudicated, convicted, or the subject of a suspended imposition of  
6 sentence for possession, use, or distribution of controlled substances or marijuana as defined in  
7 chapter 22-42 is ineligible to participate in any extracurricular activity at any secondary school  
8 accredited by the Department of Education and Cultural Affairs for one year unless such person  
9 agrees to such counseling or drug testing as the school district may prescribe. Upon a subsequent  
10 adjudication, conviction, or suspended imposition of sentence for possession, use, or distribution  
11 of controlled substances or marijuana by a court of competent jurisdiction, that person is  
12 ineligible to participate for one year in any extracurricular activity accredited by the Department  
13 of Educational and Cultural Affairs. Upon a second subsequent adjudication, conviction, or  
14 suspended imposition of sentence for possession, use, or distribution of controlled substances  
15 or marijuana by a court of competent jurisdiction, that person is ineligible to participate in any



1 extracurricular activity while that person is attending any school accredited by the Department  
2 of Education and Cultural Affairs. Upon such a determination in any juvenile proceeding the  
3 Unified Judicial System shall give notice of that determination to the South Dakota High School  
4 Activities Association and the chief administrator of the school in which the person is enrolled.

5 As used in this section, the term, extracurricular activity, means any activity sanctioned by  
6 the South Dakota High School Activities Association.

1    **BILL HISTORY**

2    1/11/00 First read in Senate and referred to Education. S.J. 14

3    1/30/00 Scheduled for Committee hearing on this date.

4    2/1/00 Education Hog Housed.

5    2/1/00 Scheduled for Committee hearing on this date.

6    2/1/00 Education Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 267

7    2/2/00 Education Hog Housed.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

285D0031

## SENATE TAXATION COMMITTEE ENGROSSED NO. **SB10** - 1/19/00

Introduced by: Senators Vitter, Madden, and Symens and Representatives Sebert, Chicoine, Engbrecht, Lintz, Slaughter, and Sutton (Duane) at the request of the Interim Tax Assessment Committee

1 FOR AN ACT ENTITLED, An Act to create a classification for owner-operated commercial  
2 business property and to establish a maximum property tax levy on owner-operated  
3 commercial business property for the general fund tax levy of a school district.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 10-13 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 Each owner-operated commercial business in this state is specifically classified for the  
8 purpose of taxation. An owner-operated commercial business is a business owned by any person  
9 who is actively operating the business as the owner's primary economic activity for which such  
10 classification is requested pursuant to section 2 of this Act. Primary economic activity means that  
11 at least thirty-three and one-third percent of the total family gross income of the owner is derived  
12 from the operation of such business. The owner shall annually submit to the register of deeds a  
13 signed copy of the owner's individual tax return or a statement by a certified public accountant  
14 stating that the owner meets the income requirements provided in this section. For the purposes  
15 of this section, an owner-operated commercial business is any building, structure, or land, which

1 is assessed and taxed as a separate unit, as recorded in the records of the director of equalization.

2 A person may only have one business location on a statewide basis classified as an  
3 owner-operated commercial business. If the owner operates the business in less than one hundred  
4 percent of the space within the building or structure, the portion of the building or structure so  
5 occupied by the owner shall be classified as an owner-operated commercial business.

6 Section 2. That chapter 10-13 be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 To be eligible for a property tax classification pursuant to section 1 of this Act, the owner  
9 of each business shall submit a certificate to the county director of equalization stating such  
10 person is the owner of the property on the legal assessment date. The owner shall submit the  
11 certificate by March fifteenth. If the director of equalization classifies the property as an  
12 owner-operated commercial business, the property shall retain this classification until such time  
13 the owner's eligibility for this classification changes. The owner shall notify the director of  
14 equalization if a change in eligibility for this classification occurs. The owner shall sign the  
15 certificate under penalty of perjury. The Department of Revenue shall prescribe the form of the  
16 certificate.

17 Section 3. That chapter 10-13 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 Any person who receives an owner-operated commercial business classification by  
20 misrepresenting the facts as to the person's ownership or eligibility for such classification shall  
21 be assessed a penalty equal to ten dollars per thousand dollars of valuation on the property,  
22 which assessment shall become a perpetual lien on the property pursuant to § 10-21-33. The  
23 person shall be barred from receiving the owner-operated commercial business classification for  
24 any property in the state for the following five years.

25 Section 4. That § 10-12-42 be amended to read as follows:

10-12-42. For taxes payable in 2000 and each year thereafter, the levy for the general fund of a school district shall be as follows:

(1) The maximum tax levy shall be sixteen dollars and fifteen cents per thousand dollars of taxable valuation subject to the limitations on agricultural property as provided in subdivision (2) of this section, owner-occupied property as provided for in subdivision (3) of this section, ~~and nonagricultural acreage property as provided for in subdivision (4) of this section, and owner-operated commercial business property as provided for in subdivision (5) of this section;~~

(2) The maximum tax levy on agricultural property for such school district shall be four dollars and seventy cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in ~~chapter 10-13~~ this section, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies;

(3) The maximum tax levy for an owner-occupied single-family dwelling as defined in § 10-13-40, for such school district may not exceed seven dollars and fifty-six cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in ~~chapter 10-13~~ this section, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies;

(4) The maximum tax levy on nonagricultural acreage property as defined in § 10-6-33.14, for such school district shall be five dollars and seventy cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in ~~chapter 10-13~~ this section, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies; and

1       (5)   The maximum tax levy for an owner-operated commercial business property as  
2           defined in section 1 of this Act, for such school district shall be ten dollars per  
3           thousand dollars of the property's taxable valuation of two hundred thousand dollars  
4           or less and sixteen dollars and fifteen cents per thousand dollars of the property's  
5           taxable valuation in excess of two hundred thousand dollars. If the district's levies are  
6           less than the maximum levies as stated in this section, the levies shall maintain the  
7           same proportion to each other as represented in the mathematical relationship at the  
8           maximum levies.

9       All levies in this section shall be imposed on valuations where the median level of assessment  
10   represents eighty-five percent of market value as determined by the Department of Revenue.  
11   These valuations shall be used for all school funding purposes. If the district has imposed an  
12   excess levy pursuant to § 10-12-43, the levies shall maintain the same proportion to each other  
13   as represented in the mathematical relationship at the maximum levies in this section. The school  
14   district may elect to tax at less than the maximum amounts set forth in this section.

15       Section 5. This Act is effective on January 1, 2001.

1    **BILL HISTORY**

2    1/11/00 First read in Senate and referred to Taxation. S.J. 15

3    1/19/00 Scheduled for Committee hearing on this date.

4    1/19/00 Taxation Do Pass Amended, Passed, AYES 7, NAYS 2.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

400D0664

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB157** - 2/2/00

Introduced by: Senators Daugaard and Brosz and Representatives Koskan and Broderick

1 FOR AN ACT ENTITLED, An Act to clarify the reporting and collection of the  
2 telecommunications access fee for the deaf, hearing impaired, and speech impaired.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-59-1 be amended to read as follows:

5 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes  
6 or fees imposed by chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A, 10-46B,  
7 10-47B, 10-52, 10-60, 32-3, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,  
8 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

9 Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 The secretary of revenue may promulgate rules, pursuant to chapter 1-26, to administer the  
12 fee imposed pursuant to § 49-39-51. The rules may include:

- 13 (1) The filing of returns and payment of the fee;  
14 (2) Determining the application of the fee;  
15 (3) Record-keeping requirements; and  
16 (4) Determining auditing methods.



1    **BILL HISTORY**

2    1/21/00 First read in Senate and referred to Commerce. S.J. 138

3    2/1/00 Scheduled for Committee hearing on this date.

4    2/1/00 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 268

5    2/1/00 Commerce Place on Consent Calendar.

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

552D0714

## SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB178** - 2/2/00

Introduced by: Senators Hainje, Frederick, Paisley, and Vitter and Representatives Brown (Richard), Munson (Donald), Peterson, and Richter

1 FOR AN ACT ENTITLED, An Act to revise the school term.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 13-26-1 be amended to read as follows:

4 13-26-1. The school fiscal year shall begin July first and end June thirtieth. ~~A school day shall~~  
5 ~~be at least five and one-half hours, exclusive of intermissions, and at least two and three-fourths~~  
6 ~~hours shall count as a half day. The time specified as a "school day" shall not apply below grade~~  
7 ~~four.~~ Each local school board shall set the number of days in a school term, the length of a school  
8 day, and the number of school days in a school week. The local school board or governing body  
9 shall establish the number of hours in the school term for kindergarten programs. The Board of  
10 Education shall promulgate rules pursuant to chapter 1-26 setting the minimum number of hours  
11 in the school term for grades one through three. The number of hours in the school term for  
12 grades four through twelve may not be less than nine hundred sixty-two and one-half hours,  
13 exclusive of intermissions. An "intermission" is the time when pupils are at recess or lunch.

14 Section 2. That § 13-26-2 be amended to read as follows:

15 13-26-2. The school board or governing body shall operate grades one through twelve in its  
16 schools for at least a nine-month regular term in any one school year. The regular school term

1 may be conducted on a year-round basis, ~~but for grades one through twelve shall consist of~~  
2 ~~school actually in session for at least one hundred seventy-five days~~ and shall begin on a date  
3 established by the school board. The ~~State~~ Board of Education shall promulgate rules pursuant  
4 to chapter 1-26 governing the operation and scheduling of year-round schools. ~~The rules may~~  
5 ~~allow deviations from the one hundred seventy-five day requirement in this section and from the~~  
6 ~~five and one-half hour per day requirement in § 13-26-1 if the total school term hours~~  
7 ~~requirement in § 13-26-2.1 is met. The local school board or governing body may establish the~~  
8 ~~school term for kindergarten programs. Any school board or governing body may release~~  
9 graduating high school seniors from school before the end of the regular term if the release is for  
10 no more than three school days. Make up days time for school closing because of weather,  
11 disease, or emergency need not exceed ten school days. Graduating seniors are excused from  
12 make up days time if the make up days occur time occurs after the students have graduated or  
13 after graduation exercises have been held. If classes have been convened and then are dismissed  
14 because of inclement weather, that day constitutes a school day in session equal to the number  
15 of hours planned for that day as established in the local school district calendar for the year.

16 School boards are encouraged to provide days time within the regular school term for  
17 curriculum and staff development which shall be in addition to the ~~one hundred seventy-five days~~  
18 time required in this section. Each school board shall determine the appropriate number of days  
19 time for this activity and how best to use the time based on local needs for program  
20 development, increased parent participation, student contact, teachers' preparation, or other  
21 needs of the schools in the district. School shall be in session only when classes are held and as  
22 provided in §§ 13-26-4 and 13-26-4.1. A school board may operate a special term during the  
23 summer months.

24 Section 3. That § 13-26-2.1 be repealed.

25 ~~— 13-26-2.1. Notwithstanding §§ 13-26-1 and 13-26-2, each local school board may establish~~

1 ~~the length of a school day and the number of school days in a school week, provided the number~~  
2 ~~of school hours in a school term for grades four through twelve may not be less than nine~~  
3 ~~hundred sixty-two and one-half hours, exclusive of intermission. A plan to establish a school~~  
4 ~~term pursuant to this section must first be approved by the South Dakota Board of Education.~~  
5 ~~The state board may adopt rules, pursuant to chapter 1-26, regulating the approval of local~~  
6 ~~district plans.~~

1    **BILL HISTORY**

2    1/24/00 First read in Senate and referred to Education. S.J. 166

3    1/27/00 Scheduled for Committee hearing on this date.

4    1/27/00 Education Deferred to another day.

5    2/1/00 Education Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 266